

ARNOLD & PORTER

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October 23, 2003

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

VIA HAND DELIVERY

April J. Sands, Esq.
Federal Elections Commission
999 E Street NW
Washington, DC 20463

Re: **MUR 5357 – Response of Centex Construction Group, Brice Hill, Ken Bailey, Chris Genry and Mark Layman**

Dear Ms. Sands:

This letter is in response to letters dated September 25, 2003, informing Centex Construction Group (“CCG”) and four of its present or former officers (Brice Hill, Ken Bailey, Chris Genry and Mark Layman) that the Federal Election Commission has found reason to believe that they violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and offering to enter into pre-probable cause conciliation with them.

CCG accepts the Commission’s offer to enter pre-probable cause conciliation and looks forward to bringing this matter to a timely resolution. CCG, as well as Messrs. Hill, Bailey, Genry and Layman, will continue to work with Commission attorneys and staff to provide whatever information is needed to close this matter.

For the reasons set forth below, however, we submit that CCG’s liability extends at most to violations occurring after January 2000, when Bob Moss and Gary Esporin became CEO and co-CFO, respectively, of CCG, because prior to that time no officer or employee of CCG had any knowledge of or participation in the violations that occurred at Centex-Rooney Construction Co., Inc. (“Rooney”). Moreover, the facts show that neither Mr. Hill, nor Mr. Bailey, nor Mr. Genry, nor Mr. Layman violated the Act, and this matter should be closed as to them with no further action by the Commission.

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FEDERAL ELECTION COMMISSION
CENTEX CONSTRUCTION GROUP
2003 OCT 23 P 5:02
2003 OCT 23 P 4:20

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ARNOLD & PORTER

April J. Sands, Esq.

October 23, 2003

Page 2

The Factual and Legal Analysis ("Analysis") accompanying the Commission's letter incorrectly describes the actions and knowledge of Messrs. Hill, Bailey, Genry and Layman, and hence of CCG, in numerous respects. As demonstrated by the affidavits submitted with this letter, the key errors are as follows:

- The Analysis states that at a meeting among Brice Hill, Ken Bailey and Bob Moss on March 4, 1998, "Brice Hill reviewed numbers provided by Rooney's CFO Gary Esporin which indicated who had been politically active with respect to making personal political contributions." Mr. Esporin was not present at the meeting in question, and neither Mr. Hill nor Mr. Bailey reviewed any such information at the meeting or at any other time.
- The Analysis states that at the March 4, 1998 meeting Mr. Hill "'approved the plan whereby [Centex-]Rooney would consider political contributions at year-end discretionary bonus time.'" To the extent that this statement is meant to indicate that Mr. Hill approved a plan for reimbursement of political contributions it is incorrect. Mr. Hill specifically and clearly instructed Mr. Moss that employee political contributions were not to be reimbursed out of corporate funds.
- The Analysis states that Mr. Hill, Mr. Genry and Mr. Layman "knew of the composition of the discretionary management bonus column [and] approved the individual bonus amounts." Neither Mr. Hill, nor Mr. Genry, nor Mr. Layman knew of the composition of the discretionary management bonus program. Neither Mr. Genry nor Mr. Layman approved individual bonus amounts, and Mr. Hill reviewed those amounts only to assure that the bonus pool was being equitably divided. None of them knew how individual bonuses were calculated or that political contributions were being reimbursed through the bonus program.
- The Analysis states that "[t]he policy of reimbursing federal political contributions using the discretionary management bonuses was approved at the CCG level by Brice Hill . . . , Ken Bailey . . . , Chris Genry . . . , and Mark Layman." None of those individuals knew about or approved any policy of reimbursing federal (or any other) political contributions using discretionary management bonuses.

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ARNOLD & PORTER

April J. Sands, Esq.
October 23, 2003
Page 3

- The Analysis states that “the corporate funds used to reimburse the federal political contributions came from a CCG account as part of a centralized administrative function, which was then reimbursed by Rooney.” There was no “reimbursement” by Rooney; when the funds were paid out, they were debited to Rooney’s account by accounting entries.

In summary, Messrs. Hill, Bailey, Genry and Layman did not make or consent to corporate contributions, nor assist in making contributions in the name of another.

Rooney, like all other CCG subsidiaries, had a bonus program for its employees. Rooney’s executive incentive plan was based on a formula derived from Rooney’s operating performance. Mr. Moss, as CEO of Rooney, had the sole responsibility to allocate bonus awards, so long as the awards did not exceed the amount of money available in the pool. Each year, he first decided the percentage of the bonus pool allocated to each participating employee. Under the plan, a portion of the bonus pool was left available for distribution at Mr. Moss’s sole discretion at year-end, after the amount in the pool was calculated and the percentages divided up. The bonuses were reflected on a spreadsheet prepared by Mr. Esporin, approved by Mr. Moss, and forwarded to CCG.

However, the only responsibility that CCG had with respect to the bonuses was to ensure that the total amount of bonuses awarded by Mr. Moss did not exceed the amount available in the bonus pool; in addition, Mr. Hill reviewed the bonuses to ensure that they were being equitably distributed among participants. No one at CCG had any responsibility for reviewing or approving the amounts paid to individual employees. No one at CCG knew, or had any reason to know, the method by which Mr. Moss calculated those individual bonuses. Those calculations were the sole province of the CEO and CFO of each of the operating companies.

Some time early in 1998,¹ Mr. Moss met with Mr. Hill and Mr. Bailey. This meeting is described in affidavits submitted by Mr. Hill and Mr. Bailey. Mr. Moss raised the issue of political contributions to local candidates in Florida, arguing that such contributions would benefit the company. Mr. Hill, as CEO of CCG, told him that the

¹ The Analysis states that the meeting took place on March 4, 1998. While that is the date of Mr. Esporin’s handwritten note memorializing Mr. Moss’s report to him of that meeting, we do not know what date the meeting actually took place.

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ARNOLD & PORTER

April J. Sands, Esq.
October 23, 2003
Page 4

company would not make political contributions, and that the structure of Rooney's bonus plan gave employees both the incentive and the wherewithal to make contributions that would benefit the company. Mr. Moss asked whether the company could reimburse employees for such contributions. Mr. Hill told him quite clearly that it could not – that there would be no reimbursement of employees. Rather, he agreed only that Mr. Moss could take into account employees' activities benefiting the company, along with all their other contributions to the company's success, in determining their bonuses. Moreover, Mr. Hill did not review any numbers regarding political activity by Rooney employees at this meeting. This discussion related solely to contributions to candidates in Florida localities, and federal political contributions were not discussed in any way.

Nonetheless, after this meeting Mr. Moss and Mr. Esporin set up a "discretionary management bonus" column on the bonus spreadsheet and used it to reimburse employee political contributions on a dollar-for-dollar basis, grossed up for taxes. However, it bears repeating: At no time did Mr. Hill, Mr. Bailey, Mr. Genry, nor Mr. Layman know that Rooney employees were reporting their political contributions to Mr. Esporin and Mr. Moss. At no time did Messrs. Hill, Bailey, Genry, or Layman know that those contributions were being reimbursed through bonuses, or know how the discretionary management bonus amounts were calculated. Nor did they have any reason to know, since none of them had any role in setting bonus amounts for Rooney employees or in approving the specific bonuses, which was the responsibility of the Rooney CEO and CFO. The activity of individual CCG officers is discussed below:

Brice Hill. Mr. Hill, who was the Chairman and CEO of CCG until January 2000, was asked by Bob Moss to approve a program of reimbursing employee contributions. He rejected that request and told Mr. Moss that employee contributions could not be reimbursed. He had no idea that his instructions had been ignored. He was never told that employee political contributions were reimbursed. He did not know how Mr. Moss determined individual bonuses or what the discretionary management bonus column represented. His only responsibility with respect to the bonus plan was to ensure that the bonuses were distributed equitably, not to check how they were calculated.

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ARNOLD & PORTER

April J. Sands, Esq.

October 23, 2003

Page 5

Ken Bailey.² Mr. Bailey, who was the COO of CCG, was present at the meeting at which Mr. Hill told Mr. Moss that political contributions would not be reimbursed. He had no responsibility with respect to Rooney's bonus plan and did not see or review the spreadsheets. He did not know that employee political contributions were being reimbursed.

Chris Genry. Mr. Genry was the CFO of CCG until January 2000. His only responsibility with respect to the Rooney bonus pool was to ensure that the total amount of bonuses awarded did not exceed the amount in Rooney's bonus pool. He never knew that political contributions were being reimbursed, nor what the discretionary management bonus column on the spreadsheet represented.

Mark Layman. Prior to January 2000, Mr. Layman was Vice President-Finance of CCG. In that capacity his only responsibility with respect to the Rooney bonus pool was to perform the actual calculations verifying that the total amount of bonuses awarded did not exceed the amount in Rooney's bonus pool. In January 2000, he and Mr. Esporin became co-CFO's of CCG; Mr. Layman's primary responsibility was strategic planning. He had no responsibility with respect to the Rooney bonus plan after his promotion. At no time did Mr. Layman know, or have any reason to know, that employees' political contributions were being reimbursed, nor what the discretionary management bonus column on the spreadsheet represented.

In November 2002, Mr. Layman drafted a twelve-page memorandum outlining concerns about the business direction of CCG and the leadership of Mr. Moss which he planned to send to Centex Corporation's CEO, Larry Hirsch. He asked Mr. Esporin if he had any issues to include in the memorandum. Mr. Esporin listed a number of issues, including "questionable political contributions." Mr. Esporin did not explain what this meant, and Mr. Layman had no reason to think that it referred to the reimbursement of employee contributions. Indeed, given that CCG and its subsidiaries operated in a number of states (including Florida) where corporate political contributions are legal, and that Mr. Layman's memorandum as a whole related to questionable management judgment rather than illegality, Mr. Layman had no reason to suspect that this related to illegal activity. Mr. Layman delivered this memorandum to Mr. Hirsch in person; it was

² As you requested at our meeting on October 17, a copy of a statement Mr. Bailey gave to an investigator for Mr. Moss is attached at Tab A.

9662-904-40-32

ARNOLD & PORTER

April J. Sands, Esq.

October 23, 2003

Page 6

not emailed to Mr. Hirsch by Mr. Esporin. When Mr. Layman discussed this memorandum with Centex Corp. management, the brief reference to political contributions was not mentioned.

One other small factual point bears mention. Centex did not retain Mr. Esporin as an officer of CCG after he was removed from his co-CFO position, although Mr. Esporin remains an employee of Rooney.

Thus, it is apparent that no CCG officer had any knowledge or involvement in the improper activities until Mr. Moss and Mr. Esporin became CCG officers in 2000. We concede that at that point responsible officers of CCG (but only Mr. Moss and Mr. Esporin) were aware of Rooney's policy of reimbursing political contributions through bonuses. Their responsibilities at CCG, as opposed to their continued responsibilities at Rooney,³ did not involve approval of specific bonuses, and CCG therefore has strong arguments that it is not liable for their activities in their capacity as Rooney officers. See *United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (citing "well established principle that directors and officers holding positions with a parent and its subsidiary can and do 'change hats' to represent the two corporations separately despite their common ownership"). Nonetheless, CCG is willing to take responsibility for their actions. However, as we noted in our April 29 letter on behalf of CCG, no public interest would be served by imposing a financial penalty on CCG. The primary violator was Rooney, and any liability on CCG's part derives solely from the dual role of Mr. Moss and Mr. Esporin. Rooney has admitted that it violated the Act, and the Commission's authority will be fully vindicated by imposition of a penalty on Rooney.

The Analysis refers to the concept of "apparent authority." To the extent that this reference suggests a basis to hold CCG liable for conduct by Rooney or Rooney's officers, it is misplaced. Apparent authority is created by "conduct of the principal which, reasonably interpreted, causes [a] third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." Restatement (Second) Agency § 27 (1958). The purpose of the doctrine is to hold "a principal accountable for the results of third-party beliefs about an actor's authority to act as an agent when the belief is reasonable and is traceable to a manifestation of the

³ As we have explained previously, Mr. Moss and Mr. Esporin retained positions as Chairman and CFO of Rooney respectively when they assumed positions at CCG.

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ARNOLD & PORTER

April J. Sands, Esq.
October 23, 2003
Page 7

principal." Restatement (Third) Agency § 2.03 cmt. c (Tentative Draft No. 2, 2001).
"When working within [apparent authority] doctrine, one must remain attentive to the question of to whom authority might be said to be 'apparent.'" *Local 184, Internat'l Longshoremen's Ass'n, AFL-CIO v. NLRB*, 735 F.2d 1384, 1398 n. 21 (D.C. Cir. 1984).

The doctrine of apparent authority is thus based on the unfairness of inducing a third person to rely on an agent, and then disclaiming responsibility for the agent's actions. But the Commission has not been induced to rely on CCG's agents by any conduct of CCG; indeed it has not relied on those agents in any way. Whatever liability CCG might have as to third parties who reasonably relied on its conduct, we are aware of no authority permitting the Commission to invoke the doctrine in circumstances such as these.

In summary:

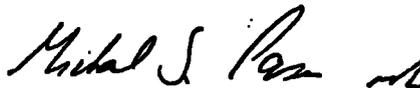
- CCG is willing to enter into negotiations to conciliate this matter
- The Commission should close the matters as to Brice Hill, Ken Bailey, Chris Genry and Mark Layman without taking any action against them, since none of them violated the Act.

Once again, we look forward to working with you to resolve this matter, and we appreciate the opportunity to move to pre-probable cause conciliation. As always, we are available to answer any additional questions you may have.

Sincerely,



Robert S. Litt



Michael S. Pasano

8662 904 40 32

BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of Centex Construction
Group, Inc.

MUR: 5357

Affidavit of Brice Hill

2003 OCT 23 P 4: 20

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FEDERAL
OPERATIONS CENTER

State of Texas

ss.:

County of Dallas

I, Brice Hill, being duly sworn, state:

1. My name is Brice Hill. I live in Dallas, Texas. During the period 1995 through January 15, 2002, I was President and Chief Executive Officer ("CEO") of Centex Construction Group, Inc. ("CCG"). My office was located in Dallas, Texas.

2. This Affidavit is made in response to matters set out in the September 24, 2003 letter addressed to me by the Federal Election Commission.

3. I did not know about, nor did I approve, any policy of using discretionary management bonuses to reimburse federal political contributions, or any other political contributions, made by employees of CCG's subsidiary Centex-Rooney Construction Co. ("Rooney"). Further, I did not know the basis on which Rooney's executives determined the amount of the discretionary management bonuses set out on the spreadsheets that reflected the distribution of the Incentive Compensation Plan for Rooney Employees. I did not consent to the making of corporate federal contributions or assist in making contributions in the name of another.

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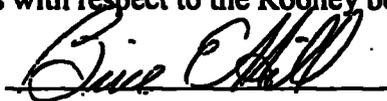
4. I do not recall the specific meeting date of March 4. However, I do recall a meeting at some point at which Bob Moss, who was Rooney's CEO at the time, asked me about reimbursing employees' state and local political contributions. We never discussed contributions to federal candidates. I told Mr. Moss emphatically that the company would not reimburse employees for political contributions. I told Moss that salaries were high enough, and that if people wanted to make contributions because they believed that they were the right thing to do, they should do so, but that the company was not going to reimburse them. I noted that I often had made political contributions and never asked for, or expected, reimbursement. After the discussion described above, I told Mr. Moss that as manager of his division he controlled the distribution of the company's bonus pool, and that if he thought that an employee's community activities benefited the company he could take that into account in setting a discretionary bonus. I emphasized, however, that employees' political contributions were not to be reimbursed, and I expected Mr. Moss to abide by this direction.

5. Mr. Moss raised the subject of reimbursement for political contributions on other occasions and my answer to him was the same every time, specifically that the company was not going to reimburse employees for political contributions. At no time was I aware that, despite my instructions, Mr. Moss had arranged to have employees' political contributions reimbursed out of the Rooney bonus pool.

6. Bonuses were awarded by the operating divisions within CCG. All six of the operating divisions had the same incentive compensation program. Operating division CFOs would send final bonus allocations and totals to Chris Genry, the CFO of CCG, and me. We would review this information to make sure that the pool totals were

correct and in line with the other operating companies. I did not know and had no reason to know the reasoning used by an operating division CEO in awarding discretionary bonuses, as he was allowed to do under the incentive compensation plan.

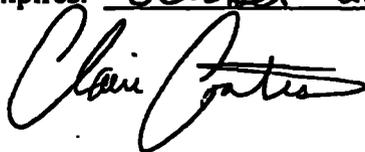
7. I did not review any "numbers" from Gary Esporin or anyone else regarding political contributions by Rooney employees. I did not know what political contributions Rooney employees were making, nor that any employees were supplying this information to Mr. Esporin or Mr. Moss. I did not know what the "discretionary management bonus" column on the Rooney bonus spreadsheet represented, not did I have any need to given my limited responsibilities with respect to the Rooney bonus plan.



Brice Hill

Sworn to before me on this 21 day of October, 2003

My Commission Expires: October 28, 2006



1003-904-40-32

BEFORE THE
FEDERAL ELECTION COMMISSION

In the Matter of Centex Construction
Group, Inc.)

MUR: 5357)

Affidavit of Mark Layman)

State of Texas)
County of Dallas) ss.:

I, Mark Layman, being duly sworn, state:

1. My name is Mark Layman. I live in Plano, Texas. I am the Chief Financial Officer ("CFO") of Centex Construction Group ("CCG"). My office is in Dallas, Texas.

2. The Commission's letter to me of September 24, 2003, states in part:

... CCG's Vice-President of Finance Mark Layman . . . knew of the composition of the discretionary management bonus column [relating to bonuses paid to employees of Centex-Rooney Construction Co., Inc., a CCG subsidiary] [and] approved the individual bonus amounts

The policy of reimbursing federal political contributions using the discretionary management bonuses was approved at the CCG level by [among others] Mark Layman, Vice-President of Finance at CCG.

These allegations are incorrect. I did not know of the composition of the discretionary management bonus column; I did not approve individual bonus amounts; and I did not know of or approve any policy of reimbursing federal or any other political contributions using discretionary management bonuses. I did not consent to the making of federal corporate contributions or assist in the making of contributions in the name of another.

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3. From 1998 until January 16, 2000, I was Vice President-Finance of CCG, where I had responsibility for payroll and financial accounting for CCG and its subsidiaries. During that period, Chris Genry was Chief Financial Officer ("CFO") of CCG, Brice Hill was the Chief Executive Officer ("CEO") of CCG, Bob Moss was CEO of Centex-Rooney Construction Co., Inc. ("Rooney"), and Gary Esporin was CFO of Rooney. During this period, Mr. Hill and Mr. Genry were in CCG's executive offices in Dallas, Texas, and I was based at an off-site CCG facility in Dallas. Mr. Moss and Mr. Esporin were based in Rooney's offices in South Florida.

4. During this period, employees of CCG subsidiaries, including Rooney, were eligible to participate in various incentive compensation plans. I was aware that Rooney's bonus plan, like others, included a component that was awarded at the discretion of the operating company CEO, but I did not know how that was done or what factors the CEO took into account.

5. During this period, spreadsheets showing the calculation of Rooney's incentive compensation pool, with various columns for elements of the compensation and bonus amounts, were prepared by Gary Esporin, the CFO of Rooney; approved by Bob Moss, the CEO of Rooney; and sent to Mr. Hill and Mr. Genry for approval.

6. Mr. Genry forwarded the spreadsheets to me. My responsibility was to verify that the total amount of the bonus pool utilized by Rooney was correct. It was not my responsibility to, and I never did, evaluate or analyze the numbers reflected in the individual columns or the amount of bonuses awarded to particular individuals at Rooney. At no time did I understand or know that political contributions were being reimbursed to individuals through amounts awarded as discretionary management

bonuses at Rooney. Indeed, I never knew what the discretionary management bonus column represented, nor did my responsibilities require me to know this information.

7. On January 16, 2000, I was named co-CFO of CCG. I continued to be based in Dallas. My primary responsibilities related to strategic planning for CCG and oversight of the shared services group. Gary Esporin, named as the other co-CFO of CCG, continued to be based in Plantation, Florida. Bob Moss was named Chairman and CEO of CCG and continued to be based in Plantation, Florida. During this period, others working for me assumed my former responsibility to assure that the total amount of the bonus pool utilized by Rooney was correct. I did not have any responsibility to evaluate or analyze the numbers reflected in the individual columns or the amount of bonuses awarded to particular individuals at Rooney. At no time did I understand or know that campaign contributions by Rooney employees were being reimbursed through amounts awarded as discretionary management bonuses. As before, I did not know, nor did I have any reason to know, what the discretionary management bonus column represented. Indeed, as co-CFO, I had no responsibility for the execution of the Rooney bonus program whatsoever. As co-CFO, the six operating companies had segregated reporting requirements – three reported to Mr. Esporin and three reported to me. Mr. Esporin retained oversight of Rooney.

8. In early 2000, at about the time Mr. Moss became CEO of CCG, Mr. Esporin told me that Mr. Moss had a discussion with Mr. Hirsch regarding a variety of issues he wanted to raise on becoming CEO of CCG. I recall that he said Mr. Moss wished to gain Mr. Hirsch's approval, and that he did gain Mr. Hirsch's approval, to use a "discretionary management bonus" for employees who went "over and above" for the

company's benefit. Mr. Esporin did not inform me, and in no way did I understand at the time or at any other time, that the bonus would be used to reimburse political contributions.

9. The Commission's letter also states:

In November 2002, as part of a larger review of Mr. Moss' management of CCG, Gary Esporin e-mailed Larry Hirsch, CEO of Centex, a list of perceived problems at CCG, which included the 'questionable campaign contributions' being tracked at the direction of Bob Moss.

This statement is incorrect in significant part. I prepared the November 2002 memorandum; Mr. Esporin provided several comments that I included in the memorandum, including a reference to "questionable political contributions."¹ I did not understand this reference to have anything to do with reimbursement of campaign contributions by employees, a practice of which I was completely unaware. I presented the memorandum to Mr. Hirsch in person rather than sending it by e-mail. A copy of the memorandum is attached as Exhibit A.

10. In 2002, I became concerned about decisions Mr. Moss was making concerning the direction of CCG. I began to prepare a memorandum to the leadership of Centex Corp., describing what I believed were weaknesses in the Mr. Moss's management style and strategic decision-making. I asked Gary Esporin if he also had concerns. In a telephone conversation with me, Mr. Esporin offered a number of items to be added to the memorandum, including a reference to "questionable political contributions." Therefore, I included this reference as part of a lengthy list of issues in

¹ The Commission's letter refers to "questionable campaign contributions." In fact, the language in the memorandum refers to "question political contributions."

one paragraph of my 12-page memorandum. Mr. Esporin did not explain what he meant by this statement.

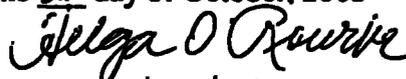
11. My memorandum addressed a series of issues related to decisions and actions by Bob Moss that I believed were of questionable benefit to the business and threatened its overall long-term profitability. I believed Mr. Esporin shared my views. When he added the reference to "questionable political contributions" to the list of other items, I believed he was questioning Mr. Moss's judgment in making certain unspecified contributions, but in no way did I suspect Mr. Esporin meant Mr. Moss was engaging in unlawful reimbursement of political contributions.

12. When I completed the memorandum, I hand-delivered it to Larry Hirsch, the Chairman of Centex Corp., and discussed some of it with him. The memorandum was not emailed to Mr. Hirsch by Mr. Esporin or myself. Tim Eller, the President of Centex Corp., called me a few days later to discuss my concerns. Although Mr. Eller had the memorandum, it was not used as a reference point for the discussion. The reference to "questionable political contributions" never came up in my discussions with Mr. Hirsch or Mr. Eller, nor did we have any discussion of political contributions in any respect.


Mark Layman

Sworn to before me on this 21st day of October, 2003

My Commission Expires: 2/12/06





23.04.406.3006

LAW OFFICES
LYONS AND SANDERS
CHARTERED

DALE R. SANDERS *
BRUCE M. LYONS **
HOWARD L. GREITZER

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FORT LAUDERDALE, FL 33302-1778

March 3, 2003

Mr. Kenneth R. Bailey
Senior Vice President
Centex Construction Group
Post Office Box 369
Ellijay, Georgia 30540

Re: Bob Moss Investigation.

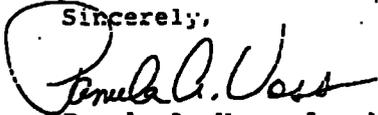
Dear Mr. Bailey:

I enclose herewith for your review a copy of the taped Statement taken on February 24, 2003, by our investigator, Mr. Don Carpenter, in the above referenced matter.

Please review this statement and if you agree that it is a true and accurate statement, please execute this document below and return to our office in the enclosed, self addressed, stamped envelope, provided for your convenience.

If you have any questions, please do not hesitate to contact our office.

Sincerely,



Pamela A. Voss, Legal Assistant to
BRUCE M. LYONS
Enclosures

I HAVE READ THE ATTACHED STATEMENT AND THE CONTENTS OF WHICH ARE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

signed & returned 3/10/03
Kenneth R. Bailey
KRB

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IN RE: INVESTIGATION

COPY ~~ORIGINAL~~

STATEMENT
OF
KEN BAILEY

Ellijay, Georgia
February 24, 2003
12:30 o'clock P.M.

PRESENT:

DON CARPENTER, Investigator

23-04-406-3013

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THEREUPON:

KEN BAILEY

being of lawful age, in his answers to the questions to be to him propounded, testified as follows:

MR. CARPENTER: This is Don Carpenter, here with Mr. Ken Bailey.

We're taking a statement for the use of Bruce Lyons, his representation of Robert Moss.

There's an agreement in place that this statement will be transcribed and that Mr. Bailey will have an opportunity to read it, review it and make any corrections or changes that he feels would be appropriate. And that the statement at this point is for the use of Mr. Lyons, and only his use, and it will not be distributed beyond that without the agreement of Mr. Bailey.

The basic subject of the statement and the -- I'm going to put on the record Mr. Bailey and I have had some conversations prior to this tape being turned on, is a meeting that apparently took place in early 1998, involving himself, Mr. Bruce Hill and Mr. Bob Moss.

And from this point forward, the statement will consist in the narrative by Mr. Bailey.

23-04-406-3014

23-04-406-3015

1 MR. BAILEY: This is Ken Bailey, former
2 executive vice president and COO of Centex
3 Construction Group. And I will recall the
4 substance of a meeting that occurred between
5 myself, Brice Hill, who was president of Centex
6 Construction Group, and Bob Moss, who was
7 president of Centex-Rooney, in the early months
8 of 1998.

9 The primary subject of the meeting, which
10 was a meeting after a meeting, was to discuss
11 how to make miscellaneous small political
12 contributions.

13 Since Centex-Rooney was working in many
14 rural counties scattered throughout Florida, for
15 school boards and other governmental agencies,
16 the necessity for making political contributions
17 was explained by Bob Moss, and the method by
18 which they could be made was the subject of
19 discussion.

20 Brice Hill voiced an opinion that if the
21 contributions need to be made, then the
22 individual employees who had the contacts should
23 make the contributions, and that was the name of
24 the game.

25 Bob Moss felt that these contributions --

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1 or that the individuals should be in some manner
2 reimbursed for those contributions where they
3 were not related to the individual's home or had
4 any connection whatsoever with that individual
5 or any other reason other than to further the
6 cause of Centex-Rooney in their pursuit of work.

7 The -- a long conversation -- a long, being
8 probably 15 minutes, ensued, with give and take
9 arguments, and it was finally decided that --
10 and suggested by Moss that he would have
11 individuals make the political contributions
12 when they were deemed to be proper. And that
13 they -- the amounts of the contributions would
14 simply be given consideration at year-end
15 discretionary bonus time.

16 Brice Hill reluctantly agreed, and the
17 meeting was adjourned with that being
18 established.

19 Okay. I need to clarify one point, that
20 during my dictation of the statement I did stop
21 and start with pauses, so as -- if the tape
22 appears to be interrupted at times, it is at my
23 doing that I did that.

24 (Thereupon, the statement was concluded.)

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23-04-406-3017

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CERTIFICATE OF ACKNOWLEDGMENT
STATE OF FLORIDA, COUNTY OF BROWARD:

I, CYNTHIA R. HEWLETT, Registered
Professional Reporter of the Seventeenth Judicial
Circuit:

DO HEREBY CERTIFY that the foregoing
taped statement was transcribed by me; and the
foregoing pages, numbered 1 through 4, are a true
record of the recorded testimony given by the
witness.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties,
nor relative or employee of said attorney or counsel,
or financially interested in the foregoing action.

The foregoing certification of this
transcript does not apply to any reproduction of the
same by any means unless under the direct control
and/or direction of the certifying reporter.

DATED this 28th day of February, 2003.

Cynthia R. Hewlett

CYNTHIA R. HEWLETT
Registered Professional Reporter
Notary Public, in and for the
State of Florida at Large
My Commission Expires
March 12, 2003

BEFORE
FEDERAL ELECTION COMMISSION

In the Matter of Centex Construction
Group, Inc.

MUR: 5357

AFFIDAVIT OF KEN BAILEY

STATE OF Georgia)

) ss:

COUNTY OF Gilmer)

I, Kenneth R. Bailey, being duly sworn, state:

1. My name is Kenneth R. Bailey. I reside in Gilmer County Ga., (County seat is Ellijay, Georgia.) I am currently the Senior Vice President of Centex Construction Group ("CCG"), and Chairman of Centex Engineering and Construction. Collectively, these are part-time employment positions to which I was appointed after retiring as Executive Vice President and Chief Operating Officer ("COO") of CCG on March 31, 2001. From March 9, 1998 through March 31, 2001, I was Executive Vice President and COO of CCG. During that period, I was based in Dallas, Texas.

2. I did not know about, nor did I approve, any policy of using discretionary management bonuses to reimburse federal political contributions, or any other political contributions, made by employees of CCG's subsidiary Centex-Rooney Construction Co. ("Rooney"), nor did I know the composition of the discretionary management bonus column in spreadsheets reflecting the distribution of the Incentive Compensation Plan for Rooney

23-04-406-3019

employees. I did not consent to the making of corporate federal contributions or assist in making contributions in the name of another.

3. When I joined CCG in 1998, I reported to Brice Hill, who was Chairman and CEO of CCG. Mr. Bob Moss was Chairman and CEO of Rooney. Mr. Moss reported to me and to Mr. Hill.

4. Mr. Moss became Chairman and CEO of CCG on January 16, 2000, replacing Mr. Hill. From the time Mr. Moss became CEO of CCG until his departure from the company on February 13, 2003, I reported to Mr. Moss.

5. Although I cannot recall the exact date, I recall a meeting at Mr. Moss' request with Mr. Moss, Mr. Hill, and myself in 1998 at which political contributions were discussed. Mr. Hill, Mr. Moss and I were the only ones present at the meeting. Mr. Moss brought up the subject of how Rooney could make contributions to candidates in small counties in Florida where Rooney was operating. Mr. Moss said he believed the Centex PAC would not be effective for contributions of this nature, because it was too cumbersome to get checks from the PAC for officials in small counties.

6. I recall that Mr. Hill and Mr. Moss discussed the issue back and forth for some time. Mr. Moss ultimately said that he would simply take an employee's political activity that benefited the company into account at bonus time. Mr. Hill agreed that Mr. Moss could take political activity into consideration, along with the other community involvement that benefited the company, when determining bonuses. The subject of contributions to candidates for federal office was never discussed.

7. Mr. Hill did not approve any plan that the company would reimburse employees' political contributions. Based on their conversation, I certainly did not understand that there

23-04-406-3020

would be a dollar-for-dollar reimbursement of an individual's campaign contributions. I understood that employees' activity that was intended to benefit the company would be one factor that Mr. Moss would take into account when he awarded bonuses at the end of the fiscal year.

8. No written material relating to political contributions by Rooney employees was provided to Mr. Hill or me at the meeting. I did not review any numbers provided by Mr. Esporin or anyone that indicated who had been politically active with respect to making personal political contributions.

9. I did not approve or consent to a policy of reimbursing federal political contributions through a discretionary management bonus during the 1998 meeting or at any other time.

10. I was not aware of any reimbursement of political contributions, through bonuses or otherwise. I never received nor approved any reimbursement of political contributions.

11. My primary responsibilities at CCG are related to operations. I am not involved in making policy. I had no role in determining or approving bonuses for Rooney employees. I understand that Rooney prepared annual spreadsheets reflecting the bonuses to be paid Rooney employees. I neither saw nor approved these spreadsheets. Nor would I in the course of my duties. I was never aware that the spreadsheets included a "discretionary management bonus" column separate from the normal discretionary bonus, nor that any component of Rooney bonuses constituted reimbursement for political contributions.

12. I do not recall any further conversations with Mr. Hill or Mr. Moss about this issue after the 1998 meeting, until the spring of this year, when Mr. Moss called me to ask about my recollection of the 1998 meeting.

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Kenneth R. Bailey

The foregoing instruction was acknowledged before me this 21st day of October, 2003 by Kenneth R. Bailey who is personally known to me or who has produced DRIVER LICENSE (state ID used) or identified by a credible witness as identification and who did or did not take an oath.

Effie S. Quarles
Notary Public

My Commission Expires:
MY COMMISSION EXPIRES JANUARY 22, 2006

EFFIE S. QUARLES
Print Name

23.04.406.3022